REMARKS/ARGUMENTS

Claims 1-10 and 12-16 remain in the application. Reconsideration of this application is respectfully requested in view of these remarks/arguments.

The Examiner has rejected Claims 1-2 and 14-16 under 35 U.S.C. § 103(a) as being unpatentable over Dunn (USPN 5,625,877) in view of Eswara (USPN 6,219,554). Applicants traverse these rejections. To establish a *prima facie* case of obviousness under 35 U.S.C. §103 based upon the combined teaching of two or more references, three criteria must be met. First there must be some suggestion or motivation to combine the reference teachings. Second there must be a reasonable expectation of success, and finally, the references when combined must teach or suggest all of the claim limitations. *See* M.P.E.P. §2143. Applicants respectfully submit that the combined teachings of Dunn and Eswara do not render pending Claims 1-2 and 14-16 obvious because the combined teachings fail to teach or suggest all of the claim limitations.

Specifically, the present invention teaches establishing a default channel aggregation strategy for both an inbound path and an outbound path from at least one site. (*See* p. 6, lines 1-2 and 7-9; and p. 7, lines 5-6 and 8-10). Claims 1 and 16 were previously amended to include the limitations of "*establishing a default channel aggregation for an inbound path using at least one frequency from at least one site [and] establishing a default channel aggregation for an outbound path using at least one frequency from at least one site. . .*", and Claim 2 includes these italicized limitations by dependency. The Examiner concedes that Dunn fails to teach any of the above-italicized limitations but states that Eswara teaches these limitations in col. 4, lines 42-45 & 49-50 and col. 6, lines 49-65. Applicants respectfully disagree. A brief summary of Eswara would be helpful in understanding the distinctions between the teachings in this reference and the invention as claimed in the present application. Eswara teaches a method for determining a list of channels (a "scan list") that can potentially be used in a Dynamic Frequency Association ("DFA") radio during traffic peaks in a network subcell. (Col. 2, lines 45-51 and col. 4, lines 40-47.) From this "scan list" that DFA radio can then determine a list of clear channels (an "ordered clear list") that may be selected and associated to an available DFA radio to prevent an overload condition from occurring within the subcell. (Col. 6, line 60 to col. 7, line 8; FIG. 2.)

As stated above, the Examiner contends that Eswara teaches establishing a default channel aggregation strategy for communication using at least one frequency from at least one cite at col. 4, lines 42-45 & 49-50 and col. 6, lines 49-65. Applicants disagree. Applicants instead submit that this language merely teaches what Applicants stated above, which is the determination of a "scan list" of available channels that could potentially be used during traffic peak and the further determination therefrom of a list of clear channels that may be associated to a given device to prevent overload. Nowhere in this language or any other language of Eswara is there a mention of using the channels in the scan list or in the list of clear channels for channel aggregation or for establishing a channel aggregation strategy. Conversely, Eswara teaches that the channels from the ordered clear list are individually associated to an available DFA radio. (*See* col. 7, lines 6-8, "a DFA radio is associated with, or tuned to, *the selected channel. . .*"; col. 8, lines 61-64, "In step 808, a determination is made whether there is *a clear channel. . .* available. If so, execution proceeds to step 810, in which a handoff to *the clear channel* is performed;" and FIG. 2 illustrates individual channels in the ordered clear list being associated to a given DFA radio.

Moreover, Claim 1 originally included and Claim 16 was previously amended to include the limitation of "*signaling the updated channel aggregation strategy. . . via in-band signaling.*" The Examiner concedes that Dunn fails to teach this limitation and the Examiner does not cite to any language in Eswara that teaches this limitation (Applicants submit that there is no such language in Eswara). Of this limitation, the Examiner merely makes an unsupported statement that "signaling via an in-band message [would have been obvious] because this would allow for the user of a mobile device to be allocated variable bandwidth on demand by aggregation of available communication channels." Applicants submit that this unsupported statement fails to satisfy the Examiner's burden of making a *prima facie* case that the limitation is either taught or suggested in Dunn or Eswara, especially since the allocation of variable bandwidth on demand could be accomplished by other means, including using a dedicated control channel as suggested in the present application at page 3, lines 12.

Regarding Claims 14 and 15, Applicants submit that the combination of Dunn and Eswara does not render these claims obvious because, similar to the above argument by reference to Claims 1, 2 and 16, the combination of the references fails to teach or suggest the limitation in Claim 14 and included by dependency in Claim 15 of "*receiving an in-band*

message having an updated channel aggregation." However, in this instance, the Examiner concedes that Eswara also fails to teach this limitation but makes another unsupported statement of its obviousness. Similar to Applicants' above argument, Applicants submit that this unsupported statement is insufficient to meet the Examiner's burden of establishing a *prima facie* case for obviousness of Claims 14 and 15.

Moreover, Applicants submit that the combination of Dunn and Eswara further fail to render Claims 14 and 15 obvious because they fails to teach or suggest the limitation in Claim 14 and included by dependency in Claim 15 of "*loading a channel scan list.*" Eswara teaches that a DFA radio "determines" a scan list. (*See* col. 2, line 48; col. 6, lines 49-50; and FIG. 3A, box 332.) However, there is no indication that once this scan list is determined that it is thereafter "*loaded*" into any other device as recited in Claim 14.

Based on all of the above, Applicants submit that Dunn and Eswara do not render pending Claims 1-2 and 14-16 obvious and that, therefore, these claims are in a condition for allowance.

The Examiner has rejected Claims 3-10 and 12-13 under 35 U.S.C. § 103(a) as being unpatentable over Dunn in view of Eswara and Sun (USPN 6,510,147). Applicants traverse these rejections. Applicants respectfully submit that the combined teachings of Dunn, Eswara and Sun do not render pending Claims 3-10 and 12-13 obvious because the combined teachings fail to teach or suggest all of the claim limitations. Specifically as argued above, both Dunn and Eswara fail to teach or suggest the limitations recited in amended Claim 1 and included by dependency in Claims 3-10 and 12-13 of "*establishing a default channel aggregation for an inbound path using at least one frequency from at least one site [and] establishing a default channel aggregation for an outbound path using at least one frequency from at least one site. . .*" Sun also fails to teach these limitations. Therefore, Applicants respectfully submit that Claims 3-10 and 12-13 are likewise in a condition for allowance.

The Applicants note the art cited, but not relied upon by the Examiner.

No amendment made was related to the statutory requirements of patentability unless expressly stated herein. No amendment made was for the purpose of narrowing the scope of any claim, unless Applicants have argued herein that such amendment was made to distinguish over a particular reference or combination of references. In addition, those limitations in pending Claims 1-10 and 12-16 that were not specifically addressed by the Applicants in this reply are

not conceded to be taught or suggested in any of the references cited by the Examiner, and Applicants reserve the right to further argue that these limitations are not so taught or suggested.

The Applicants believe that the subject application, as amended, is in condition for allowance. Such action is earnestly solicited by the Applicants.

In the event that the Examiner deems the present application non-allowable, it is requested that the Examiner telephone the Applicants' attorney or agent at the number indicated below so that the prosecution of the present case may be advanced by the clarification of any continuing rejection.

Accordingly, this application is believed to be in proper form for allowance and an early notice of allowance is respectfully requested.

Please charge any fees associated herewith, including extension of time fees, to Deposit Account No. 502117.

Respectfully submitted,

By: _____

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